



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Branch
P. O. Box 1720
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STEVE WESTLY
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CAROLE MIGDEN
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STEVE PEACE
Member

June 30, 2003 Franchise Tax Board Litigation Roster

All cases currently active and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list is also provided of new cases that have been added to the roster for the month as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: www.ftb.ca.gov/legal/Lit_roster.pdf

The Litigation Roster on the Internet site will be the latest version. It is normally revised on a monthly basis.

FRANCHISE AND INCOME TAX

CLOSED CASES – JUNE 2003

Case Name

Court Number

NONE

FRANCHISE AND INCOME TAX

NEW CASES – JUNE 2003

Case Name

Court Number

Agua Caliente Band of Cahuilla Indians U.S. Dist. Ct. Central Dist. of Calif. No. 03-4116-GAF

New Gaming Systems, Inc. U.S. Dist. Ct. Eastern Dist. of Calif. No. CIVS 03-1126-WBS

**FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER**

JUNE 2003

AGUA CALIENTE BAND OF CAHUILLA INDIANS v. Franchise Tax Board	
U.S. District Court Central District of California No. 03-4116-GAF	Filed – 06/11/03
<u><i>Taxpayer's Counsel</i></u> Art Bunce, Kathryn Clenney Law Offices of Art Bunce	<u><i>FTB's Counsel</i></u> Herbert A. Levin

Issues

1. Whether individuals living on land located within the boundaries of an Indian reservation, but where title is held by an individual, are exempt from state taxation.
2. Whether income received by individuals living on land located within the boundaries of an Indian reservation, but where title is held by individuals as the result of Indian tribal activity, is exempt from state taxation.

<u>Year</u>	Unknown	<u>Amount</u>	\$1.00 or more
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Status **Plaintiff's Complaint for Declaratory Relief filed on June 11, 2003.**

AMDAHL CORPORATION v. Franchise Tax Board	
San Francisco Superior Court Docket No. 321296	Filed – 05/14/01
Appellate Court 1st District Court No. A101101 (FTB)	
Appellate Court 1st District Court No. A101203 (Amdahl)	
<u><i>Taxpayer's Counsel</i></u> Timothy K. Roake Fenwick & West LLP	<u><i>FTB's Counsel</i></u> Kristian Whitten

Issues

1. Whether Section 25106 was properly applied to the facts of this case in a manner which does not discriminate against foreign commerce.
2. Whether Section 24411 was properly applied in this case.
3. Whether Section 24411 discriminates against foreign commerce.
4. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is a dividend for purposes of Sections 24411 and 25106 of the Revenue and Taxation Code.
5. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is gross income.

<u>Years</u>	1988, 1989, 1991 and 1992	<u>Amount</u>	\$2,935,439.00
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Status **Plaintiff/Respondent's Request for Judicial Notice, [Proposed] Order Granting Request for Judicial Notice, Combined Respondent's Brief and Cross-Appellant's Opening Brief of Amdahl Corporation filed June 27, 2003.**

COLGATE-PALMOLIVE, CO. & SUBSIDIARIES v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS00707

Filed – 02/07/03

Taxpayer's Counsel

Eric J. Coffill, Carley A. Roberts

Morrison & Foerster, LLP

FTB's Counsel

Steven J. Green

- Issues
1. Whether the sales factor was properly calculated by excluding proceeds from short-term financial instruments and value added taxes assessed by foreign countries.
 2. Whether the property factor needs to be adjusted to value property at its appreciated value to fairly reflect its activities in California.

Years 1974-1982, 1984-1987, 1989-1991 Amount \$2,912,696.00

Status Discovery proceeding.

DAVIS, CRYSTAL TIFFANY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC261559

Filed – 11/09/01

Taxpayer's Counsel

Martin N. Segal, Esq.

FTB's Counsel

Elisa B. Wolfe

Issue Whether a portion of an amount received in the settlement of a lawsuit was properly characterized as punitive damages and included in taxable income.

Year 1991 Amount \$5,038.00

Status Request for Dismissal filed June 20, 2003.

EDUCATIONAL EMPLOYEES CREDIT UNION, et al. v. Franchise Tax Board

Sacramento Superior Court Docket No. 511821

Filed - 12/20/89

Court of Appeal, 3rd Appellate District, No. 3-CV-C020733Taxpayer's Counsel

Joanne Garvey, & Teresa Maloney

Heller, Ehrman, White & McAuliffe

FTB's Counsel

Steven J. Green

Issue Whether defendant's determination as to the methodology for deduction of indirect expenses against taxable investment income was proper.

Years 1980 through 1985 Amount \$1,137,006.98

Status Waiting for Court of Appeal to set date for Oral Argument.

FARMER BROS. CO. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC237663
Court of Appeal, 2nd Appellate District Court No. 160061
California Supreme Court No. S117131

Filed – 09/29/00

Taxpayer's Counsel

Robin C. Campbell, Esq.

Anglin, Flewelling, Rasmussen, Campbell & Trytten, LLP

FTB's Counsel

Dean Freeman

Issue Whether Section 24402 of the Revenue and Taxation Code is unconstitutional under the United States Constitution.

Years 06/30/92 through 6/30/98 Amount \$814,705.00

Status **Defendant/Appellant's Petition for Review to the California Supreme Court and Request for Judicial Notice in Support of Petition for Review filed June 26, 2003.**

FREIDBERG, EDWARD & TRACI E. REYNOLDS v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC-02-404182

Filed – 02/06/02

Taxpayer's Counsel

John E. Cassinat & Ronald L. Carello

Cassinat Law Corporation

FTB's Counsel

Marguerite Stricklin

Issues 1. Whether Plaintiffs' "horse breeding and racing business expenses" were deductible as business expenses in the years involved.
2. Whether expenses incurred by plaintiffs in horse breeding and racing activities were deductible as business expenses in the years involved.

Years 1991 through 1994 Amount \$149,696.00

Status **Trial completed on May 22, 2003.**

FREYERMUTH, JANINE v. Franchise Tax Board

San Francisco Superior Court Docket No. 308985

Filed – 01/04/00

Taxpayer's Counsel

Janine Freyermuth, In Pro Per

FTB's Counsel

Randall P. Borcharding

Issue Whether the taxpayer was a resident of California.

Years 1986 and 1987 Amount \$47,471.00

Status Order to Show Cause Re: Dismissal (CRC225).

FREYERMUTH, REED v. Franchise Tax Board

San Francisco Superior Court Docket No. 308973

Taxpayer's Counsel

Joel K. Belway, Esq.

Filed – 01/04/00

FTB's Counsel

Randall P. Borcharding

Issue Whether the taxpayer was a resident of California.

Years 1986 and 1987 Amount \$47,471.00

Status U.S. Bankruptcy Court Order – Discharge of Debtor granted on February 19, 2003.

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC269404

Filed – 03/06/02

Court of Appeal, 2nd Appellate District No. B165665Taxpayer's Counsel

Charles R. Ajalat

Law Office of Ajalat, Polley & Ayoob

FTB's Counsel

Stephen Lew, Donald

Currier & Joseph O'Heron

Issues

1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.
2. Whether interest income was properly characterized as business income.
3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.
4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.
5. Whether various receipts from intangible assets were properly excluded from the sales factor.
6. Whether research tax credits were properly limited to the entity incurring the expense.
7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.
8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.
9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years 1986 through 1988 Amount \$10,692,755.00

Status **Respondent and Cross-Appellant Franchise Tax Board's Application for Extension of Time to File Combined Opening Brief and Declaration of Stephen Lew filed June 11, 2003.**

HARDIE, GEORGE G. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC292256

Taxpayer's CounselRichard E. Posell, Gregory P. Korn
Greenberg, Glusker, Fields, Claman,
Machtinger & Kinsella, LLP

Filed – 03/18/03

FTB's CounselAnthony Sgherzi
George M. TakenouchiIssue Whether Plaintiff was a resident of California for the year in issue.Year 1993 Amount \$1,172,932.00Status Answer of Defendant Franchise Tax Board to Complaint for Declaratory Relief Regarding Tax Residency filed May 9, 2003.**HYATT, GILBERT P. v. Franchise Tax Board**

Clark County Nevada District Court No. A382999

Nevada Supreme Court Case No. 35549 – Docket No. 36390 & 39274

U.S. Supreme Court No. 02-42

Filed - 01/06/98

Taxpayer's CounselThomas L. Steffen & Mark A. Hutchison
Hutchison & Steffen
H. Bartow Farr IIIFTB's Counsel

Felix Leatherwood

Issues 1. Whether plaintiff was a resident of California from September 26, 1991 through April 2, 1992.
2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.
3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.Years 1991 and 1992 Amount \$13,204,611.00Status Clark County District Court:
FTB's Consolidated Opposition to Hyatt's Motions to Compel re: Vaughn Index and Deliberative Process; and Counter-Motion for a Protective Order filed June 20, 2003. FTB's Opposition to Gilbert P. Hyatt's Motion for : (1) A Protective Order to Prohibit the FTB from Coaching Witnesses; and (2) An Order Compelling Answers to Deposition Questions filed June 20, 2003. FTB's Opposition to Hyatt's Motion for an Order Compelling FTB Witnesses to Answer Deposition Questions Regarding "CBR," Return on Investment, and Other Motivating Factors filed June 20, 2002. FTB's Consolidated Reply in Support of Its Motions to Compel Deposition Responses and Production of Documents re: Kern and Cowan filed June 30, 2003. Defendant's Consolidated Reply in Support of Its Motions to Compel Deposition, Responses and Production of Documents Re: Kern and Cowan filed June 30, 2003.

IN THE CLUB, INC. AND PURE CLASS, INC. v. Franchise Tax Board

Los Angeles Superior Court Docket No. 02K17484

Filed – 09/20/02

Los Angeles Superior Court No. BC293295

Taxpayer's CounselCharles P. Rettig, Steven D. Blanc, Sharyn Fisk
Hochman, Salkin, Rettig, Tocher & Perez, P.C.FTB's Counsel

George M. Takenouchi

Issue Whether penalties for the late payment of taxes were properly assessed.

Year 1999 Amount \$12,819.00 Penalty

Status **Joint Stipulation for Settlement; Payment and Dismissal; Order Thereon filed June 2, 2003. Defendant's Notice of Entry of Order for Joint Stipulation for Settlement, Payment and Dismissal filed June 4, 2003.**

J.H. MCKNIGHT RANCH, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 303484

Filed - 05/13/99

Court of Appeal, 1st Appellate District No. A098729Taxpayer's CounselJon S. Siamas, Esq.
Carl J. Stoney, Esq.
Crosby, Heafey, Roach & MayFTB's Counsel

David Lew

Issues

1. Whether the court has jurisdiction when the interest owing with respect to the underlying assessment has not been paid.
2. Whether the "tax benefit" rule operates to allow income realized from the cancellation of indebtedness to be disregarded.
3. Whether the "contested liability doctrine" allows deductions incurred in prior years to be reported in the year the indebtedness was discharged.

Year 1990 Amount \$97,258.00

Status **Oral Argument held on June 26, 2003.**

JIM BEAM BRANDS CO. v. Franchise Tax Board

San Francisco Superior Court No. CGC-02-408203

Filed - 05/21/02

Taxpayer's CounselCharles J. Moll III
Edwin P. Antolin
Morrison & Foerster LLPFTB's Counsel

George C. Spanos

Issues

1. Whether the gain realized on the sale of all of the stock of a subsidiary was properly classified as business income.
2. Assuming the gain on the sale of all of the stock was business, whether the FTB properly computed the basis of the stock.

Year 1987 Amount \$133,042.00

Status Defendant's Case Management Statement filed on March 7, 2003.

K-MART, CORPORATION, et al. v. Franchise Tax Board

U.S. Bankruptcy Court for the Northern District of Illinois

Filed – 04/11/03

Bankruptcy No. 02-B02474 – Adversary Proceeding No. 03A01420

Taxpayer's Counsel

Charles F. Smith

Skadden, Arps, Slate, Meagher & Flom

FTB's Counsel

Michael Cornez

Larry Fischer

Issues

1. Whether gain realized on the sale of 20+% interest in an Australian retailer, Coles, was business income.
2. Whether the gain realized on the sale of the interest in Coles was properly treated for AMT purposes.
3. Whether dividends and interest received with respect to Coles was business income.
4. Whether the taxpayer's request to account for its Canadian inventory on a LIFO basis was properly denied.
5. Whether two insurance subsidiaries were properly excluded from the combined report.
6. If the insurance subsidiaries were includible in the combined report, whether adjustments need to be made to the property and sales factors.
7. Whether proceeds from the short-term investment of financial assets were properly excluded from the sales factor.
8. Whether section 24402 is constitutional.
9. Whether adjustments based upon federal RAR's were correctly made.
10. Whether there were other unspecified errors in adjustments made or not made to the taxpayer's returns.
11. Whether an under-payment penalty was properly imposed.

Years 1986-1989, 1992-1994, 1999 & 2000 Amount \$3,524,625.00 - Tax
\$ 82,590.01 - Penalty

Status Summons and Complaint Under 11 U.S.C. § 505 U.S. Bankruptcy Court for the Northern District of Illinois Eastern Division was filed by fax on April 17, 2003.

THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board

Alameda Superior Court Docket No. 837723-0

Filed – 04/09/01

Taxpayer's Counsel

Amy L. Silverstein, Anthony P. Canini and

Andres Vallejo

Morrison & Foerster, LLP

FTB's Counsel

Joyce Hee

Issues

1. Whether gross receipts from the sale of short-term financial instruments should be included in the sales factor.
2. Whether gain realized on the sale of a partial interest in a limited partnership formed from three subsidiaries constitutes business income.

Years 1993 and 1994 Amount \$2,185,718.00

Status **Request for Dismissal on Plaintiffs' third and fourth causes of action set forth on First Amended Complaint filed June 6, 2003. Plaintiff/Appellants' Notice of Appeal; Notice of Election to Proceed Under Rule 5.1; Notice Designating Reporter's Transcript filed June 6, 2003.**

Longbrook, Michael G. & Barbara J. v. Franchise Tax Board

Los Angeles Superior Court Docket No. 02K21208

Filed – 11/18/02

Taxpayer's Counsel

FTB's Counsel

Michael G. & Barbara J. Longbrook, In Pro Per

Elisa Wolfe

Issue Whether the frivolous return penalty provided by § 19179 has been properly assessed.

Years 1997 and 1998 Amount \$1,000.00 Penalty

Status Hearing on Plaintiffs' Request for Default; Default granted \$2.00 given to Plaintiffs on February 14, 2003.

Marken, Donald W. & Claudine H v. Franchise Tax Board

San Francisco Superior Court Docket No. 302520

Filed - 04/05/99

Court of Appeal, 1st Appellate Dist. No. A091644

California Supreme Court No. S 104529

Taxpayer's Counsel

FTB's Counsel

William E. Taggart, Jr.

Marguerite Stricklin

Taggart & Hawkins

Issue Whether plaintiffs were residents of California in 1993.

Year 1993 Amount \$244,012.00

Status **On Remand from Court of Appeal, on June 9, 2003, case was assigned to Judge Wick. Defendant/Appellant's Trial Brief filed on June 9, 2003. Plaintiff/Respondents' Trial Brief filed on June 9, 2003.**

Marro, Donald C. and Lillian S. Clancy v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC 02-414788 Filed – 11/18/02

Taxpayer's Counsel

FTB's Counsel

Donald C. Marro, In Pro Per

Kristian Whitten

Issue Whether assessments based on federal adjustments were timely made.

Years 1993 and 1994 Amount \$9,267.00

Status **Plaintiffs' Notice of Appeal filed May 23, 2003.**

MARTIN, SCOTT R. v. Franchise Tax Board

US Dist. Ct, Northern District of California Case No. C02-05446

Taxpayer's Counsel

Scott R. Martin, In Pro Per

Filed – 11/18/02

FTB's Counsel

Anne Michelle Burr

Issue Whether 46 USC § 11108 AND 11109 exempts the income of a merchant seaman from taxation.

Year 1999 Amount \$9,399.00

Status **Defendant's Reply to Opposition to Motion to Dismiss filed June 2, 2003. Hearing on Motion to Dismiss on June 17, 2003. Joint Case Management Statement filed June 23, 2003.**

MICROSOFT Corporation v. Franchise Tax Board

San Francisco Superior Court Docket No. 400444

Taxpayer's Counsel

James P. Kleier, Esq.

Preston Gates & Ellis, LLP

Filed – 10/19/01

FTB's Counsel

Julian O. Standen

Issues

1. Whether the denominator of the receipts factor was properly calculated by excluding receipts from marketable securities.
2. Whether the limitation on the deduction of dividends provided for in Section 24402 discriminates.
3. Whether adjustments made to increase the income of controlled foreign corporations included in the combined report were proper.

Year 1991 Amount \$1,879,809.00

Status **Notice of Case Management Conference scheduled for August 8, 2003, filed on June 9, 2003.**

MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC772282

Taxpayer's Counsel

Steve Mather.

Kajan, Mather and Barish

Filed – 08/27/01

FTB's Counsel

Leslie Branman-Smith

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year 1993 Amount \$227,246.00

Status **Ruling After Submission of Matter for Decision filed June 13, 2003.**

MILHOUS, ROBERT E. & GAIL P. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC773381

Taxpayer's Counsel

Steve Mather.

Kajan, Mather and Barish

Filed – 08/27/01

FTB's Counsel

Leslie Branman-Smith

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year 1993 Amount \$670,825.00

Status **Ruling After Submission of Matter for Decision filed June 13, 2003.**

MONTGOMERY WARD LLC v. Franchise Tax Board

San Diego Superior Court Docket No. GIC802767

Taxpayer's Counsel

Charles J. Moll III, Edwin P. Antolin, Pilar M. Sansone

Morrison & Foerster LLP

Filed – 12/30/02

FTB's Counsel

Gregory Price

Issues 1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.
2. Whether section 24402 Rev. & Tax. Code is constitutional.

Years 1989 through 1994 Amount \$2,694,192.00

Status **Discovery proceeding.**

NEW GAMING SYSTEMS, INC. v. Franchise Tax Board

U.S. District Court For The Eastern Dist. No. CIVS-03-1126

Taxpayer's Counsel

Spencer T. Malysiak

Spencer T. Malysiak Law Corp.

Filed – 05/27/03

FTB's Counsel

Michael J. Cornez

Issues 1. Whether the federal courts have jurisdiction to review a denial of a claim for refund of state taxes and issue a declaratory judgment as to plaintiff's liability for state taxes.
2. Whether the Indian Gaming Regulatory Act (25 U.S.C. 2701) pre-empts state taxation of income earned by non-Indians from operating a casino.

Year 1996 Amount \$2,562.93

Status **Plaintiff's Complaint for Declaratory Judgment; Refund of Taxes Paid filed May 27, 2003, and served on Franchise Tax Board on June 2, 2003. Defendant's Notice of Motion and Motion to Dismiss Complaint for Lack of Subject Matter Jurisdiction, Memorandum of Points and Authorities in Support of Its Motion to Dismiss filed June 17, 2003.**

NOBLE, HOMER E. AND STEPHANIE F. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC273634

Taxpayer's Counsel

Richard W. Craig

Filed - 05/09/02

FTB's Counsel

Anthony Sgherzi

Issue The issue is on what date during 1994 did plaintiffs cease to be residents and domiciliaries of California?

Year 1994 Amount \$151,632.00

Status Judgment After Trial in favor of Defendant filed on April 11, 2003.

ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC278386

Taxpayer's Counsel

Richard C. Field

Bingham McCutchen LLP

Filed - 07/25/02

FTB's Counsel

David Bornstein

Issue Whether the tax involved was timely assessed.

Year 1983 Amount \$12,350.00

Status Plaintiffs' Motion for Summary Judgment Denied on April 25, 2003. Defendant's Motion for Summary Judgment Granted on April 25, 2003.

PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 319008

Taxpayer's Counsel

Allan L. Schare

McDermott, Will & Emery

Filed - 02/20/01

FTB's Counsel

David Lew

Anne M. Burr

Issue What is the proper amount of depreciation deduction with respect to property acquired from former unitary affiliates?

Years 1987 through 1990 Amount \$9,960,422.00

Status **Waiting for Superior Court's decision.**

PAINE, THOMAS & TERESA A. NORTON v. Franchise Tax Board

San Francisco Superior Court Docket No. 324518

Taxpayer's Counsel

Edward Winslow

Layman, Lempert & Winslow

Filed - 09/13/01

FTB's Counsel

Marguerite Stricklin

Issues 1. Whether the plaintiffs became residents of California on April 10, 1990.
2. Whether "guaranteed payments" received by plaintiffs while residents of California from a partnership could be included in the income taxed by California.

Years 1990, 1996 through 1999 Amount \$144,278.00

Status Defendant's Notice of Appeal filed on April 23, 2003. Clerk's Notice of Filing of Notice of Appeal filed April 25, 2003.

THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board

San Francisco Superior Court Docket No. 414931

Filed – 11/21/02

Taxpayer's Counsel

FTB's Counsel

Jeffrey M. Vesely, Esq.

David Lew

Richard E. Nielsen, Esq.

Pillsbury Winthrop, LLP

Issue Whether California definition of gross income incorporated amendments to the Internal Revenue Code dealing with losses of Alaska Native Corporation.

Years 1986 and 1987 Amount \$1,138,512.00

Status Discovery proceeding. Motion for Summary Judgment to be filed July 8, 2003. Trial scheduled for October 20, 2003.

ROBINSON, CHERISH F. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC261557

Filed – 11/09/01

Taxpayer's Counsel

FTB's Counsel

Martin N. Segal, Esq.

Elisa B. Wolfe

Issue Whether a portion of an amount received in the settlement of a lawsuit was properly characterized as punitive damages and included in taxable income.

Year 1991 Amount \$5,038.00

Status **Request for Dismissal filed June 20, 2003.**

TIFFANY, ALEX A. & PATRICIA A. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC261558

Filed – 11/09/01

Taxpayer's Counsel

FTB's Counsel

Martin N. Segal, Esq.

Elisa B. Wolfe

Issue Whether a portion of an amount received in the settlement of a lawsuit was properly characterized as punitive damages and included in taxable income.

Year 1991 Amount \$6,953.00

Status **Request for Dismissal filed June 20, 2003.**

TOY'S "R" Us, Inc. & Affiliates v. Franchise Tax Board

Sacramento Superior Court Docket No. 01AS04316

Taxpayer's Counsel

Eric J. Coffill

Carley A. Roberts

Filed - 07/17/01

FTB's Counsel

Michael J. Cornez

Issue Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.

Years 1991 through 1994 Amount \$5,342,122.00

Status **Plaintiffs' Post-Trial Brief filed May 20, 2003. Defendant's Opposition to Plaintiffs' Post-Trial Brief filed June 3, 2003. Plaintiffs' Post-Trial Reply Brief filed June 12, 2003.**

U.S. AIRWAYS GROUPS, INC. et al. v. Franchise Tax Board

U.S. Bankruptcy Court, Eastern Dist. of Virginia No. 02-83984-SSM

Taxpayer's Counsel

John Wm Butler, Jr., John K. Lyons, Esq.

Skadden, Arps, Slate, Meagher & Flom

Filed - 05/13/03

FTB's Counsel

Lawrence K. Keethe

Mark D. Silvershotz

Issue What date plaintiff and several subsidiaries became a single unitary business?

Year 1988 Amount \$2,651,934.78

Status **Defendant's Opposition to Debtors' Objection to Tax Claim filed June 13, 2003.**

WEINGARTEN, SAUL M. v. Franchise Tax Board

San Francisco Superior Court Docket No. 996766

Taxpayer's Counsel

Saul M. Weingarten

Saul M. Weingarten & Associates

Filed - 7/28/98

FTB's Counsel

Marguerite Stricklin

Issues 1. Whether the Board of Equalization followed proper procedures in considering the taxpayer's appeal.
2. Whether taxpayer's real estate investments were subject to passive activity loss limitations.
3. Whether FTB properly calculated depreciation with respect to various properties.
4. Whether FTB properly calculated the sales price of a piece of property sold by the taxpayer.
5. Whether penalties were improperly imposed.

Years 1987 through 1989 Amount \$88,966.00 Tax
\$22,241.75 Penalty

Status Answer to Complaint filed October 27, 1998.

YOO, Won S. and Insook v. Franchise Tax Board

San Diego Superior Court Docket No. GIC807106

Taxpayer's Counsel

Daniel J. Cooper, Esq.

Law Offices of Daniel J. Cooper

Filed – 03/13/03

FTB's Counsel

Leslie Branman Smith

Issue Whether the taxpayers are entitled to a charitable deduction on the sale of property to The Nature Conservatory.

Years 1991 and 1994 Amount \$178,858.00

Status Discovery proceeding.

YOSHINOYA WEST, INC. v. Franchise Tax Board

Los Angeles Superior Court, Central District No. BC274343

Taxpayer's Counsel

Dwayne M. Horii

William C. Choi

Rodriguez, Horii & Choi

Filed - 05/22/02

FTB's Counsel

Donald R. Currier

Issues 1. Whether Yoshinoya West, Inc. is involved in a unitary business with its Japanese parent company.
2. Whether application of the standard allocation and apportionment provision of the Revenue and Taxation Code disproportionately taxed Yoshinoya West.

Years 1986 and 1987 Amount \$1,741,534.00

Status Trial Scheduled for November 12, 2003.